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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 000373

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SUBJECT: BOSNIA - STATE PROSECUTOR'S OFFICE CONTINUES TO
MAKE INROADS IN THE FIGHT AGAINST ORGANIZED CRIME AND
CORRUPTION

REF: A) 07 SARAJEVO 2682 B) 08 SARAJEVO 1342 C)
SARAJEVO 228 AND PRIOR D) SARAJEVO 217 E)
SARAJEVO 123 F) 08 SARAJEVO 1807 G)
SARAJEVO 234

Classified By: Ambassador Charles English for Reasons 1.4 (B) and (D)

Summary

1. (C) The State Prosecutor's Special Department for Organized Crime (SDOC), under the leadership of USG-funded secondee Drew Engel, the Deputy Chief Prosecutor and head of SDOC, made inroads in the fight against organized crime, financial crimes, and corruption in 2008. This includes using case selection criteria established in 2007 to focus prosecutors' work on the most serious cases, the takeover of terrorism cases from the General Crimes Department, and greater success with asset freezing/forfeiture. In addition, the department, with strong support from Chief Prosecutor Milorad Barasin, has weathered the political firestorm that erupted after news of its pre-investigation into corruption associated with Republika Srpska (RS) government building and other contracts became public. The ongoing case has stiffened RS opposition to the initiative to extend the mandate of the secondees past December of this year while underscoring the need to provide political cover to national prosecutors who are still gaining confidence needed to take on politically sensitive and complicated cases. Despite the difficult environment faced, we are working with judicial officials and our European colleagues to promote the extension of the secondees' presence, and to ensure that SDOC receives needed technical, financial, and other support. END SUMMARY.

SDOC Plugs Away

2. (C) Drew Engel, the USG-funded Deputy Chief Prosecutor and Head of the Special Department for Organized Crime (SDOC), told us recently that the department continued making significant inroads in 2008 and is on track to make further progress this year (Ref A). Prosecutors continued to focus on the most serious and high-profile organized crime, financial crimes, and corruption cases. In 2008, the department, which had been inundated with less serious cases that did not meet its mandate, used case selection criteria established in 2007 to transfer out roughly 50 cases to the General Crimes division; SDOC's current caseload stands at

roughly 450 cases. By year's end, over 67 percent of SDOC's confirmed indictments dealt with crimes where more than 100,000 km (approximately 69,252 USD) was involved, and the amount of fines and restitution also increased significantly.

SDOC's case selection criteria have subsequently been revised so that new financial crime cases will have to meet a 1 million km (approximately 692,520 USD) threshold. SDOC will only process human smuggling cases if there were more than ten victims, but may accept cases with fewer victims under special circumstances. The new case selection criteria are expected to take effect in the coming weeks.

Notable Cases/Trends

13. (C) SDOC had success on several high-profile cases in 2008. Former Republika Srpska Prime Minister and Party for Democratic Progress (PDP) President Mladen Ivanic was successfully prosecuted and given a 1.5 year prison sentence for corruption in the Srpske Summe case, which Ivanic is appealing. Working with police officials, SDOC also participated in a search and arrest operation launched in several cities against corrupt police officials who were creating and selling false ID cards and passports -- an operation that was widely hailed in the press. Notably, the department also prosecuted police officials from Herzegovina-Neretva Canton on corruption charges. Unfortunately, the trial was halted for months after the BiH Constitutional Court decided to review whether the defendants' rights in the case were being violated since the case was being tried at the State Court and not a cantonal

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court (Ref B).

14. (C) The investigation into corruption by RS Prime Minister Milorad Dodik and other government officials remains SDOC's most high-profile and controversial case (Refs C and prior). The RS government not only obstructed SDOC's request for documents for months before finally handing them over, but also threatened to use force against State Investigative and Protective Agency officials tasked with executing court orders in the matter. More recently, the RS threatened to pull Serbs out of state-level institutions if the case moves forward. The RS government's decision to file a criminal report against Chief Prosecutor Barasin, the Slovene prosecutor working on the corruption case, and seven other individuals, along with a case filed by the RS government with the High Judicial and Prosecutorial Council's Office of Disciplinary Counsel against Barasin, underscore the difficult political climate in which SDOC staff members work.

15. (SBU) Other notable developments within SDOC include:

- the takeover from the General Crimes Department of two terrorism cases of interest to the USG and the bombing of a shopping center in Vitez;
- the first-ever freezing of assets during the pre-trial/pre-indictment stage;
- the first-ever acceptance by the State Court of out-of-country wire taps, taps that were used in a major international smuggling case that required close cooperation among Bosnian, Serbian, Croatian, Italian, Chinese, and French authorities; and,
- the first-ever forfeiture of a house and the freezing of a hotel in a case.

The Seconded's Exit, the State Court Remains a Concern

16. (SBU) SDOC staff's biggest concern remains the impending departure of the internationals by year's end and the increased political pressure that national prosecutors will face once the internationals depart. This concern has been noted in an independent report funded by the Swedish

government. Experts assessed the impact of this impending departure on the ability of the nationals to take on the full burden and pressures associated with organized crime prosecution to be "substantial." SDOC staff members are also concerned about the need to find a suitable successor who could carry on as head of the department and about continuing personnel and resource shortages, which will become more acute given the significant cut in the State Prosecutor's 2009 budget (Ref D).

17. (C) The State Court's continued failure to address the appeals' panel tendency to modify or revoke more than sixty percent of the sentences handed down in organized crime cases in favor of the defendants and to more effectively manage its courtrooms further impede the work of SDOC. The reduced sentences demoralize SDOC staff and law enforcement officials, while the inefficient use of courtrooms needlessly prolongs cases. Other court actions have left prosecutors perplexed. These include the State Court's initial decision to release from pre-trial detention the alleged perpetrator of the Vitez bombing case, despite damning evidence against him, as well its decision to send the abuse of office case against Dragan Covic, President of the Croatian Democratic Union Party of BiH, HDZ-BiH, to a cantonal court for processing. Although State Court President Kreso continues to cast blame on the State Prosecutor's office for bringing what she terms weak cases to the Court, she has supported the effort by Engel and other international secondees to encourage informal consultations between judges, prosecutors, and defense counsels to facilitate better case management. Moreover, after intense lobbying by the international community, President Kreso recently formed a committee at the Court to study problems with the appeals panel (Ref A).

2009 Goals and Objectives

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18. (C) For the remainder of the year, SDOC staff, who are operating under the assumption that politicians will nix attempts to extend the presence of the international secondees, will focus on managing the transition to a staff composed only of Bosnian nationals. Plans are underway to team up international with national prosecutors on additional cases to permit greater capacity building, though this would mean the department as a whole would work on a reduced number of cases. There are also plans to develop sentencing guidelines so that prosecutors would have a better grasp of when they should appeal sentences and to establish tougher plea strategies. In addition, Engel believes there is a good possibility that the Slovene prosecutor in charge of the investigation into corruption by Dodik and other RS government officials will hand down indictments in the case by year's end.

U.S. Efforts to Buttress SDOC

19. (C) The Embassy remains SDOC's chief advocate. Working behind the scenes, we supported Engel's re-appointment as head of SDOC and Barasin's appointment as Chief Prosecutor. We have also expressed unequivocal public support for SDOC's work and the rule of law amidst continuing attacks by RS politicians, especially in connection with the RS corruption case. With regard to technical support, as noted in Reftels (E, F, and G), OPDAT seconded an Interim Legal Advisor to advise SDOC, has provided needed training, and has teamed up with ICITAP to promote police-prosecutor cooperation between SDOC staff and a number of law enforcement agencies. To ensure that terrorism cases would get the care that they deserve, we convinced Barasin to shift responsibility for terrorism from the under-resourced and under-performing General Crimes Division to SDOC, a policy that took effect this past January. SDOC already had responsibility for terrorism finance, so it made sense to marry terrorism and

terrorism finance and to use the international prosecutors' expertise. With a view to tackling the problems with the appeals panel, we also persuaded the Registry (the body that administers the international presence at the State Court and the State Prosecutor's Office) to assign two USG-funded secondees to work on organized crime cases on the panel. OPDAT is also completing a project analyzing verdicts that have been handed down by the appeals panel on organized crime cases since 2003, which would allow us to assess the scope of the problem (Ref G).

Comment

¶10. (C) The contributions of international secondees remain critical to SDOC's efforts to prosecute serious organized crime, financial crimes, and corruption cases. National prosecutors are becoming more familiar with a range of legal and other tools they can employ in their work, but still need to gain the confidence to take on politically sensitive cases. The outcry from the RS generated by SDOC's ongoing investigation into corruption associated with RS government building and other contracts underscores the difficult political environment in which SDOC is operating. RS Prime Minister Dodik is treating the investigation as a personal attack against him, and will likely ramp up attacks against SDOC, the State Prosecutor's Office, and more broadly speaking, state-level judicial institutions. We will continue providing political support to SDOC, encourage Milorad Barasin to remain firm, and keep the international community focused on SDOC's needs and progress.

ENGLISH